IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1323 of 2007

Chinnayan .. Petitioner
Vs

1. The State Government
Rep. by the Secretary to Govt.,
Prohibition and Excise Department
Fort St.George, Chennai.

2. The District Collector and
District Magistrate,
Villupuram District. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.V.Murugesan
For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R
(Made by P.D.DINAKARAN,J.)

The petitioner, who is the uncle of the detenu, who was incarcerated at Central Prison, Cuddalore, pursuant to the order of detention dated 26.8.2007 made in C2/37560/2007 passed against him by the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982) branding him as a Bootlegger, has filed the above petition seeking to quash the order of detention and to direct the respondents to produce the detenu before this Court and set him at liberty.

2.On 20.7.2007, on a tip off, Inspector of Police, Kanjanur P.S. conducted prohibition raid at Nanthivadi lake bund along with his party. At that time, they saw the detenu selling illicit arrack and persons consuming the same. On seeing the police party, the other persons fled away from the scene and the detenu was apprehended. A case was registered and the detenu was arrested in Cr.No.146/2007 under Section 4(1)(aaa), 4(1-A) and 4(1)(i) of Tamil Nadu Prohibition Act. Police confiscated the arrack and sent the same for chemical analysis. On examination, the arrack was found to contain 3.18% W/V of Atropine. The detenu was arrested and produced before Judicial Magistrate No.1, Villupuram, for judicial remand.

3.The second respondent, taking note of the above case as a ground case and finding that there are six adverse cases of alike nature on the file of the same Police Station, viz. in Crime Nos.87/2006, 23/2007, 104/2007, 113/2007, 140/2007, 144/2007 and having satisfied that there is a compelling necessity to detain the detenu in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a 'Bootlegger'.

4.The learned counsel for the petitioner challenges the impugned order of detention mainly on the ground that when there is no valid remand order on the date of passing of the detention order, i.e. 26.8.2007, the detaining authority erred in observing in the grounds of detention that the detenu is in prison as a remand prisoner, which reflects the non-application of mind on the part of the detaining authority and hence, on this ground the order of detention gets vitiated.

5.We have heard the learned Additional Public Prosecutor on the above point and also perused the materials placed before us.

6.It is seen that in para 3 of the grounds of detention, the detaining authority has stated "Thiru.Settu, the detenu herein, had been remanded to judicial custody in this case on 20.7.2007 along with the seized properties and remand report. The Judicial Magistrate No.1 Villupuram has ordered to remand the accused for judicial custody till 3.8.2007, and he was lodged in central prison Cuddalore. The accused was not produced before the Judicial Magistrate No.1, Villupuram on 03.08.2007, hence he was ordered to be produced on 17.08.2007". But, in support of the same, we find no valid remand order showing that on the date of
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(sra)

passing of the detention order, the detenu was in remand and in fact, the report of the prison authorities also does not speak about the remand of the detenu as on 26.8.2007, which, in our considered opinion, suffers from non-application of mind and hence, we are inclined to allow this petition on this ground.

In the result, the impugned order of detention is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

(P.D.D.J.)(R.R.J.)
Internet : Yes 06.12.2007
sra

To

1. The Secretary to Government
Prohibition & Excise Department
Chief Secretariat, Fort St. George, Chennai 9.

2. The District Collector and
District Magistrate,
Villupuram District.

3. The Superintendent, Central Prison, Cuddalore.

4. The Public Prosecutor, High Court, Madras.

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